

ANN BAVENDER*
JOHN C. BUTCHER*
HARRY F. COLE
ANNE GOODWIN CRUMP
VINCENT J. CURTIS, JR.
PAUL J. FELDMAN
FRANK R. JAZZO
M. SCOTT JOHNSON*
MITCHELL LAZARUS
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ALISON J. MILLER
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LEE G. PETRO*
RAYMOND J. QUIANZON
MICHAEL W. RICHARDS*
JAMES P. RILEY
KATHLEEN VICTORY
HOWARD M. WEISS

*NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ARLINGTON, VIRGINIA 22209

OFFICE: (703) 812-0400

FAX: (703) 812-0486

www.fhhlaw.com

RETIRED MEMBERS
RICHARD HILDRETH
GEORGE PETRUTSAS
CONSULTANT FOR INTERNATIONAL AND
INTERGOVERNMENTAL AFFAIRS
SHELDON J. KRYS
U. S. AMBASSADOR (ret.)
OF COUNSEL
DONALD J. EVANS
EDWARD S. O'NEILL*
ROBERT M. GURSS*
EUGENE M. LAWSON, JR.
WRITER'S DIRECT

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April 22, 2005

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APR 22 2005

Federal Communications Commission
Office of Secretary

Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

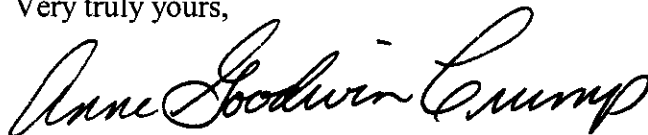
Re: MB Docket No. 04-19
RM-10845
Talladega and Munford, Alabama

Dear Ms. Dortch:

Transmitted herewith, on behalf of Calhoun Communications, are an original and four copies of its "Response to *Ex Parte* Presentation" in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate with this office.

Very truly yours,



Anne Goodwin Crump
Counsel for Calhoun Communications

Enclosures

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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APR 22 2005

In the Matter of:

Federal Communications Commission
Office of Secretary

Amendment of Section 73.202(b),

Table of Allotments,

FM Broadcast Stations.

(Talladega and Munford, Alabama)

MM Docket No. 04-19

RM – 10845

RESPONSE TO EX PARTE PRESENTATION

Calhoun Communications ("CC"), by its attorneys, hereby respectfully submits its Response to the *ex parte* letter, dated March 14, 2005, from the Honorable Mike Rogers, Member of Congress, to the Chief, Office of Broadcast License Policy, with regard to the above-captioned proceeding.¹ With respect thereto, the following is stated:

1. Rep. Rogers's letter urges the Commission's staff to act expeditiously in this proceeding in order to avoid "unnecessary business harm...." CC concurs in wishing to avoid any unnecessary delay.

2. That being said, however, the fact remains that there continues to be an impediment to favorable action with regard to the proposal advanced by Jacobs Broadcast Group, Inc. ("Jacobs"), the petitioner in this proceeding. Specifically, while the Commission could deny the Jacobs proposal based upon the arguments previously advanced by CC to demonstrate that the proposed change in community of license would not serve the public interest, the record is not sufficiently complete to allow for grant.

¹ To the extent necessary, request for leave to file this Response to the *ex parte* presentation is hereby requested.

3. CC has previously demonstrated that the evidence points to a plan by Jacobs to leave Talladega to make a "two-step" move into the larger Anniston Urbanized Area. See "Comments of Calhoun Communications," filed March 29, 2004, and "Request for Leave and Sur-Reply of Calhoun Communications," filed April 27, 2004. By changing the WTDR-FM community of license to Munford, Jacobs will be able to move its tower much closer to Anniston and still provide the requisite coverage to its community of license than would be the case if the station were to remain in Talladega. In similar circumstances in the past, in which a licensee claimed that it was proposing to change only its community of license without making a technical change, the Commission has found that it did not have sufficient information to make the record complete. *Chillicothe and Ashville, Ohio*, 18 FCC Rcd 11230 (Audio Div. 2003). There, the Commission's staff noted that, if the petitioner were first to change its community of license only and subsequently submit a modification application which would result in substantial coverage of an urbanized area, petitioner would have effectively avoided making the showing required by *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) ("*Tuck*"). Accordingly, the staff concluded that it did not have enough information to determine whether the proposed new community in that proceeding was entitled to a first local service preference and requested that further information as set forth in *Tuck* be provided.

4. The same logic applies equally in the instant proceeding. Further information must be sought about the proposed new community of license and about possible future coverage of the Anniston Urbanized Area. The Commission has insufficient information about whether the community of Munford qualifies for a first local service preference. Jacobs has not thus far provided evidence as to whether Munford is independent from or interdependent with the

Anniston Urbanized Area. Given WTDR-FM'S previous advances toward Anniston, as set forth in CC's Comments in this proceeding, and given the lack of other discernible motive for proposing the change in community, a *Tuck* showing by Jacobs is necessary in order to provide a complete record in this proceeding.

5. Jacobs has claimed in this proceeding that it has no intention to relocate its transmitter site to a location close to Anniston. Leaving aside for the moment its currently outstanding construction permit (File No. BPH-20030414ABK), which would advance just that goal, numerous questions nevertheless remain about Jacobs's intentions.

6. The most obvious mystery is why Jacobs would fight so hard to abandon Talladega, a community with a population of over 15,000 persons and no other FM service, to move to a community with a population of less than 3,000 persons. If it were motivated by concern about coverage of the issues and needs of the community of Munford, there is nothing stopping Jacobs from providing substantial coverage of those issues and needs at this time. Munford is a community within the current WTDR-FM service area, and the station can allocate as many resources as it chooses to respond to the needs and interests of Munford and other communities within the service area, whether the station is licensed to Munford, Talladega, or some other community. Therefore, if the point of the change is not to be able to move into the Anniston Urbanized Area in the future, or to make any other technical change, then what advantage might be gained by a change in the WTDR-FM community of license is far from clear. Accordingly, further information is required to clarify this point.

7. Thus, as much as all parties would prefer to avoid further administrative delay, the Commission cannot go forward with grant of Jacobs's petition at this point in time. Rather, it

must request further information from Jacobs as the next step in this proceeding so that the Commission's staff will be able to make an informed decision based upon a comprehensive record. A rush to judgment without a complete understanding of the facts can only disserve the public interest and lead to further proceedings down the line.


8. In addition, Rep. Rogers's letter raises a further question which requires inquiry before action. As noted above, this letter was not served on other parties to the proceeding. It clearly was written on behalf of Jacobs and at its behest. Section 1. 1210 of the Commission's rules prohibits any party from soliciting an *ex parte* presentation which it cannot itself make. Given that Rep. Rogers did go beyond a simple status inquiry in his letter, the Commission must determine whether Jacobs violated Section 1.1210 in seeking assistance from Rep. Rogers. This is a question that could quickly be settled by submission of a copy of any correspondence from Jacobs requesting intervention by Rep. Rogers.

WHEREFORE, the premises considered, CC respectfully requests that the Commission require submission of a *Tuck* showing before taking any positive action with regard to the Jacobs

petition and that it request a copy of any correspondence from petitioner seeking *ex parte*
Congressional contact with the Commission.

Respectfully submitted,

CALHOUN COMMUNICATIONS

By: 
Howard M. Weiss
Anne Goodwin Crump
Its Attorneys

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Eleventh Floor
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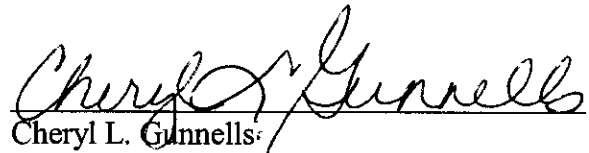
April 22, 2005

CERTIFICATE OF SERVICE

I, Cheryl L. Gunnells, a Secretary with the law firm of Fletcher, Heald & Hildreth PLC, certify that I have this 22nd day of April, 2005, caused to be sent a copy of the foregoing Response to *Ex Parte* Presentation by U.S. mail, postage prepaid, on the following:

Cary S. Tepper, Esq.
Booth Freret Imlay & Tepper, PC
7900 Wisconsin Avenue, Suite 304
Bethesda, Maryland 20814-3628

Counsel for Jacobs Broadcast Group, Inc.


Cheryl L. Gunnells

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Federal Communications Commission

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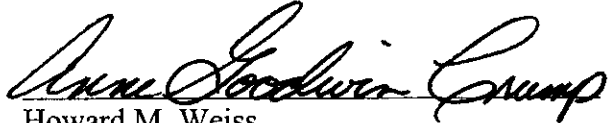
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Its Attorneys

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Bethesda, Maryland 20814-3628

Counsel for Jacobs Broadcast Group, Inc.


Cheryl L. Gunnells: